

**TCG**

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

Regulatory Affairs

**RECEIVED**

**OCT 15 1996**

Federal Communications Commission  
Office of Secretary

Teleport Communications Group  
Two Teleport Drive, Suite 300  
Staten Island, NY 10311-1004  
Tel: 718.355.2000  
Fax: 718.355.4876

October 14, 1996

William F. Caton, Secretary  
Federal Communications Commission  
1919 M. Street, N.W.  
Washington, D.C. 20554

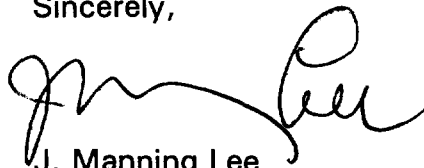
Re: Ex Parte Communication: Implementation of the Local  
Competition Provisions in the Telecommunications Act of 1996  
CC Docket No. 96-98

Dear Mr. Caton:

On October 10, 1996, Judith Herrman, Manager of Federal Regulatory Affairs, and the undersigned met with several members of the Commission staff to discuss issues relating to performance standards, reporting and penalties. FCC staff participating in this meeting were James Olson, Jeffrey Lanning, Robert Tanner, Thomas Wyatt, Daniel Hodes, and James Earl. The enclosed materials were discussed with the staff but not given to them at that time. Staff is receiving copies of these materials by copy of this letter. TCG would note that item 4 in the attachments, relating to proposals by Bell Atlantic on performance reporting, has been superseded by negotiations this week with Bell Atlantic, and updated materials will be provided to the Commission as they become available.

Please call me at 718-355-2671 if you have any questions. Thank you.

Sincerely,



J. Manning Lee  
Vice President, Regulatory Affairs

Attachments  
cc: (with attachments)  
James Olson  
Jeffrey Lanning  
Robert Tanner  
Thomas Wyatt  
Daniel Hodes  
James Earl.

No. of Copies rec'd 0  
LIST A B C D E

LIST OF PERFORMANCE MATERIALS PROVIDED BY TCG	
Item 1	Matrix of Performance Reporting Information Prepared by TCG Engineering Department
Item 2	TCG "Best and Final" proposal in Pennsylvania Arbitration on Performance
Item 3	ALJ's preliminary order in Pennsylvania arbitration
Item 4	Ten page exhibit submitted in Pennsylvania arbitration case by Bell Atlantic after receipt of ALJ order regarding initial proposals for comparative reporting of performance data
Item 5	Testimony submitted in Arizona by TCG Regional Vice President Jim Washington regarding performance standards
Item 6	Testimony submitted in Arizona for TCG by Page Montgomery regarding performance standards
Item 7	TCG's final offer on Performance as submitted to Arizona arbitrator
Item 8	Recent New York Public Service Commission Order on Performance Standards for Unbundled Loops
Item 9	Portions of TCG's agreement with Ameritech relating to Performance Penalties and Performance Reporting, which includes penalties and commitment to comparative reporting
Item 10	Copy of TCG's Petition for Reconsideration in Docket 96-98, which discusses performance standards and reporting.

Item 1	Matrix of Performance Reporting Information Prepared by TCG Engineering Department
-----------	--

## TCG PROPOSED PERFORMANCE REPORTING MATRIX

Type of Facility	Interconnection Performance Monitoring								
	Installation Performance			Quality of Service Performance				Grade of Service	
	# of Installs	Install Interval	% on time	# of Failures	% failure rate	% availability	Mean Time to Repair	Bit Error Rate	Blocking %
Unbundled Loops	Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	N/A
Switched Interconnection Trunks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes
Private Line/Special Access DS3s	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Private Line/Special Access DS1s	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Private Line/Special Access DS0s	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Multiplexers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A

Notes: All facilities include cross connections; DS0s include DDS; unbundled loops include HDSL, ADSL; "Yes" indicates data to be provided, N/A indicates data not required

Item 2	TCG "Best and Final" proposal in Pennsylvania Arbitration on Performance
-----------	--

**BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of	)	
	)	
TCG Pittsburgh Inc.	)	
	)	Docket No. A-310213F0002
For a Certificate of Public Convenience	)	
and Necessity to Operate as a	)	(Interconnection Arbitration)
Local Exchange Telecommunications Company	)	
in the Pittsburgh LATA	)	

**POSITION PAPER OF TELEPORT COMMUNICATIONS GROUP INC.**

Teleport Communications Group Inc., on behalf of its local affiliate TCG Pittsburgh, Inc. (collectively referred to herein as "TCG"), respectfully submits its Position Paper in the above-referenced docket.

TCG is the largest, most experienced, and, perhaps, the only competitive carrier committed solely to the development of local networks that are designed exclusively to provide facilities-based competition to incumbent local exchange carriers ("ILECs") in major markets across the country. Unlike other companies with substantial business outside of the local exchange market -- interexchange carriers, Internet access providers, and others -- TCG brings no agenda to this proceeding other than its need for interconnection arrangements that will permit it to compete fairly and aggressively for local exchange and access services. TCG thus brings a unique perspective to this proceeding.

In considering these local competition issues, the Pennsylvania Public Utility Commission ("Commission") must recognize the substantial degree of dependence that

### **ISSUE NUMBER 3: PERFORMANCE STANDARDS AND REPORTING**

#### **Description of issue:**

It is necessary to establish certain standards of performance to ensure that Bell Atlantic provisions service to TCG at satisfactory levels of quality. Reporting of the quality levels received by TCG and others are necessary to ensure compliance with the non-discrimination and performance standards required by the FCC.

#### **TCG's best and final offer:**

##### **PERFORMANCE:**

Bell Atlantic shall provision, install, maintain, repair, and monitor all services, interconnection facilities, unbundled elements, collocation elements, and all other interconnection arrangements, facilities and services ordered by TCG, at the same level of quality which Bell Atlantic provides to itself or any other party. Bell Atlantic shall provide to TCG the same level of transmission quality, reliability, maintenance, repair, installation, and other service characteristics, including reporting of results, that it provides to any other party, whether pursuant to written agreement or informal or formal practice. Bell Atlantic shall upon request provide TCG with complete information about all such performance arrangements and understandings. Such information may be provided pursuant to mutually acceptable confidentiality agreements where the underlying information is treated as confidential by the Bell Atlantic customer/user, provided that such confidentiality claims are not applied in such a way as to deny TCG essential information concerning the performance standards agreed upon by Bell Atlantic and the customer/user.

##### **REPORTING:**

Bell Atlantic shall provide TCG, on a quarterly basis, the information listed on Attachment A hereto. Such information shall be provided not more than 30 days after the close of a calendar month. Bell Atlantic shall also report its performance level as stated on Attachment A that is provided to (1) its internal network clients; (2) any Bell Atlantic owned affiliates (as affiliates are defined under the Act); (3) to its three largest carrier customers (cumulatively); and (4) to its ten largest commercial customers (cumulatively) for the same period. Bell Atlantic shall explain any deviation between the performance provided to TCG and that provided to any of these four categories of customers/users, and indicate what steps shall be taken to eliminate any deficiencies between the service provided to TCG and that provided to one or more of these other customers/users. Bell Atlantic shall also offer to provide to TCG comparable quality and performance reports and measurements to those that it provides to any other customers, specifying as to TCG's services the same types of information, and at the same intervals, that it provides to these other customers.

## PENALTIES:

Exhibit 9 to TCG's Petition for Arbitration contains an explanation of TCG's best and final offer on the issue of penalties associated with poor service quality.

### Rationale:

The generalized performance standards listed in the first part of the Performance Standard are proposed in compliance with Section 51.305 of the FCC rules, and the requirements of the FCC's order. On information and belief, TCG understands that Bell Atlantic has agreed to meet certain performance standards proposed by other customers, including interexchange carriers, and further that it routinely provides these customers with "report cards" or the like which track Bell Atlantic's performance in meeting those objectives. The second part of the Performance Standard is intended to require Bell Atlantic to offer the same performance standards to TCG, and in so doing merely implements the nondiscrimination standards of the FCC rules and Order. Because TCG does not have access to such agreements or knowledge of their details, it is necessary to require Bell Atlantic to advise TCG about such arrangements in order to ensure that the nondiscrimination requirements are satisfied. TCG is willing to accept reasonable confidentiality limitations on such information, provided that Bell Atlantic does not attempt to hide key information (such as the actual performance expectations of the parties) under cover of a claim of confidentiality. The provisions for reporting are intended to collect information allowing TCG and Bell Atlantic to understand and evaluate the quality of the services being provided, to ensure that TCG is not being discriminated against in violation of the Act and the Commission's rules, and as a tool to identify areas to be improved. The FCC recognized that there should be some quality reporting requirements, and specifically encouraged the states to implement such requirements.<sup>14</sup>

Because Bell Atlantic will be providing service to its principal competitor, there is a natural incentive within Bell Atlantic to deliver service at a poor quality. In order to counter act that incentive, specific and substantial penalties are necessary. The penalties proposed by TCG are reasonable penalties associated with such behavior that would have a serious, immediate, and detrimental impact upon TCG's business. To the extent that TCG is forced to deliver consumers service of an inferior quality solely as a result of Bell Atlantic's provisioning process, TCG's reputation in the marketplace is irreparably impugned. The penalties proposed by TCG should provide a positive incentive for Bell Atlantic to deliver a quality of service to TCG that is comparable to the quality of service Bell Atlantic provides itself.

---

<sup>14</sup> See, FCC Order paragraphs 310-311.



## ATTACHMENT A

Performance Measurement	Actual ILEC Service Performance (by Quarter)					
	DS0	DS1	DS3	Multiplexing	CLEC Trunking	Unbundled Loops
INSTALLATION						
Number of Installations						
Average Internal (in days)						
% Install on time						
SERVICE QUALITY						
No. of Repairs						
Mean Time to Repair						
No. of Failures						
Failure Frequency %						
% Availability						

Item 3	ALJ's preliminary order in Pennsylvania arbitration
-----------	--



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

ISSUED: September 10, 1996

IN REPLY PLEASE  
REFER TO OUR FILE  
A-310213 F0002  
(Interconnection Arbitration)

JODIE DONOVAN-MAY ESQUIRE  
1133 21ST STREET NW  
SUITE 400  
WASHINGTON DC 20036

Petition of TCG Pittsburgh for arbitration pursuant to Section 252 (b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Bell Atlantic-Pennsylvania, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Larry Gesoff.

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; a copy in the hands of the Office of Special Assistants, Room 210; and a copy in the hands of each party of record no later than September 25, 1996 by 4:30 P.M.** 52 Pa. Code §1.56(b) ~~cannot~~ be used to extend the prescribed period for the filing of exceptions. A certificate of service shall be attached to the filed exceptions.

Exceptions shall obey 52 Pa. Code: 5.533 and 5.535, particularly the 40-page limit for exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Reply exceptions will not be accepted for filing and will not be entertained by the Commission.

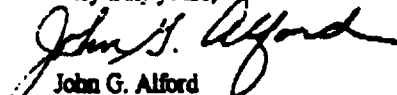
Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

All timely filed exceptions will be submitted to the Commission for consideration at Public Meeting. Late filed exceptions might not be considered by the Commission. This decision will be listed on the agenda for Public Meeting on October 17, 1996.

Parties are also requested, if possible, to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in either Word Perfect (Version 5.0 or 5.1) or ASCII format.

law  
Encls.  
Certified Mail  
Receipt Requested

Very truly yours,

  
John G. Alford  
Secretary

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of TCG Pittsburgh for arbitration</b>	<b>:</b>	
<b>pursuant to Section 252(b) of the</b>	<b>:</b>	<b>Docket No.</b>
<b>Telecommunications Act of 1996 to establish</b>	<b>:</b>	<b>A-310213F0002</b>
<b>an interconnection agreement with Bell</b>	<b>:</b>	
<b>Atlantic-Pennsylvania, Inc.</b>	<b>:</b>	<b>(Interconnection Arbitration)</b>

**RECOMMENDED DECISION**

**Before  
Larry Gesoff  
Administrative Law Judge  
Acting as Arbitrator**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>I. HISTORY OF THE PROCEEDING.....</b>	<b>1</b>
<b>II. DISCUSSION.....</b>	<b>2</b>
<b>A. RATES FOR TRANSPORT AND TERMINATION OF TRAFFIC....</b>	<b>2</b>
1. Termination of Traffic at TCG's Switch.....	2
a. The Final Offers.....	2
b. Arbitration Conference Discussion.....	3
2. Recommendation.....	4
<b>B. MEET POINT BILLING ARRANGEMENTS FOR SWITCHED         ACCESS INTERCONNECTION - THE RESIDUAL         INTERCONNECTION CHARGE.....</b>	<b>5</b>
1. Tandem-to-Tandem Switching.....	5
2. The Residual Interconnection Charge.....	7
a. The Final Offers.....	7
b. The Positions of the Parties.....	8
3. Recommendation.....	9
a. Tandem-to-Tandem Switching.....	9
b. The Residual Interconnection Charge.....	10
<b>C. PERFORMANCE STANDARDS AND PENALTIES.....</b>	<b>13</b>
1. The Final Offers.....	14
a. TCG.....	14
1) Performance.....	14

	<b>Page</b>
2) Reporting .....	14
3) Penalties .....	15
b. Bell .....	16
2. Arbitration Conference Discussion .....	16
a. Performance .....	16
b. Reporting .....	16
c. Penalties .....	18
3. Arbitrator's Recommendation .....	18
a. Performance .....	18
b. Reporting .....	19
c. Penalties .....	20
D. COLLOCATION .....	21
1. The Final Offers .....	21
a. TCG's Final Offer .....	21
b. Bell's Final Offer .....	22
2. Arbitration Conference Discussion .....	23
3. Arbitrator's Recommendation .....	24
a. Section 19.3(H) .....	24
b. Section 19.3.2(E) .....	25
c. Section 19.3.3 .....	25
d. Section 19.3.4 .....	25

	<b>Page</b>
e.    Section 19.4(A) .....	25
f.    Section 19.7 .....	26
<b>E.    COMPENSATION FOR PRIMARY DIRECTORY LISTINGS. ....</b>	<b>28</b>
1.    The Final Offers .....	28
a.    TCG's Final Offer .....	28
b.    Bell's Final Offer .....	28
2.    Arbitration Conference Discussion .....	29
3.    Arbitrator's Recommendation .....	29
<b>III.   RECOMMENDED ORDER .....</b>	<b>30</b>
 <b>APPENDIX A</b>	
 <b>APPENDIX B</b>	
 <b>APPENDIX C</b>	

## I. HISTORY OF THE PROCEEDING

Pursuant to the Telecommunications Act of 1996 (the Act) TCG of Pittsburgh (TCG) submitted its request for interconnection on February 8, 1996 and its Petition for Arbitration on July 16, 1996. Following the Pre-Arbitration Conference held August 1, 1996, I issued a pre-arbitration conference order on August 5, 1996, setting a schedule for the proceeding. On August 2, 1996, at the request of Bell Atlantic-Pennsylvania, Inc. (Bell, Bell Atlantic or BA-PA), I certified a question to the Commission, in essence asking for seven extra days for the arbitration process, thereby taking seven days from the Commission's time to issue a final order. By Pre-Arbitration Conference Order #2, issued August 13, 1996, I indicated that I would probably use issue-by-issue final offer arbitration in the proceeding. On August 22, 1996 (Opinion and Order entered August 26, 1996), the Commission answered the certified question in the negative.

On August 23, TCG filed a Position Statement containing its best and final offer on the outstanding issues; Bell filed a Statement of Position which did not contain its best and final offer, and the OCA filed written testimony.<sup>1</sup> On August 28, 1996, Bell faxed to me a Statement of Best and Final Offer, which TCG received on August 29, 1996 at the arbitration conference.

Because Bell's Statement of Best and Final Offer was a response to the best and final offers contained in TCG's Position Statement, I gave TCG the opportunity to

---

<sup>1</sup> The testimony is considered the OCA's position because this arbitration did not include testimony.



change its best and final offer during the conference. Tr. 36-37. As a result, the parties<sup>2</sup> withdrew some issues from arbitration. In Appendix A of this decision, I list the withdrawn issues and provide a transcript page reference. This will assist the Commission in determining which issues should be included in the negotiated portion of the interconnection agreement to be filed for the Commission's approval pursuant to Section 252(e)(1) of the Act.

## **II. DISCUSSION**

### **A. RATES FOR TRANSPORT AND TERMINATION OF TRAFFIC**

#### **1. Termination of Traffic at TCG's Switch.**

##### **a. The Final Offers.**

TCG offers a rate of \$0.005<sup>3</sup> per minute. Bell offers a fully symmetrical rate between \$0.003 and \$0.005 per minute (or \$0.004), based on the average rate paid by TCG to Bell during the previous calendar quarter for termination of all local calls. This includes switching and transport.<sup>4</sup>

---

<sup>2</sup> Even though the OTS, the OCA and the OSBA participated in this proceeding, I refer to TCG and Bell as the parties because it is aspects of their interconnection agreement which is being arbitrated in this proceeding.

<sup>3</sup> During the conference, TCG changed its tandem rate from \$0.0045 (See TCG Position Paper at 7-8) to \$0.005 to be symmetrical with Bell's tandem rate. Tr. 39.

<sup>4</sup> Bell's Statement of Best and Final Offer at 3-4, Tr. 41.

b. Arbitration Conference Discussion.

The FCC sends conflicting signals about this issue. Sections 1069 to 1089 of the FCC Order discuss symmetrical compensation arrangements. Under these arrangements, the incumbent LEC and the competitive LEC pay each other the same rate for the transportation and termination of traffic. In Section 1089, the FCC directs the states "to establish presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic when arbitrating disputes." In contrast to this, Section 1090 of the FCC Order and Section 51.711(a)(3) of the FCC Regulations provide three exceptions to symmetry, one of which is pertinent here. That exception is: "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."<sup>5</sup>

TCG cites Section 51.711(a)(3) as supporting its \$0.005 tandem rate because it serves the entire Pittsburgh metropolitan area from its single Pittsburgh switch and this is superior service to Bell's because Bell has multiple tandems within the LATA. Tr. 42. TCG reiterates this at page 8 of its Position Paper. "The transport rates for TCG reflect the fact that TCG's fiber optic ring network provides connectivity throughout the Pittsburgh

---

<sup>5</sup> The quoted language appears at Section 51.711(a)(3) of the FCC Rules. Section 1090 of the FCC Order uses slightly different language, but the meaning is identical.

metropolitan area on a shared basis from the TCG switch, whereas the connection from Bell Atlantic to the TCG switch would be dedicated."

Bell argues that its position attempts to reconcile the FCC's conflicting signals. It is appropriate to treat TCG's switch as a blended switch because it provides end office and tandem functions. It is fairer between TCG and Bell, and generates true symmetry, if TCG charges Bell the weighted average of what Bell charges TCG. Using 50/50 between Bell's end office switch and Bell's tandem switch produces the average rate of \$0.004 which TCG should charge Bell. Tr. 40-41.

## **2. Recommendation.**

I recommend TCG's rate of \$0.005.

Section 1090 of the FCC Order allows states to establish transport and termination rates that vary according to whether traffic is routed through a tandem switch or directly to the end office switch. Also under Section 1090, states should consider whether new technologies, such as fiber ring, perform functions similar to those provided by the incumbent LEC's tandem switch, and, thus, whether calls terminating on the competitive LEC's network should be charged the same rate as the incumbent LEC's tandem switch. Section 1090 ends with the language on which TCG relies, similar to the language in Section 51.711(a)(3).

TCG's tandem switch and fiber optic ring provide service similar to, and perhaps superior than, the service which Bell's tandem switch provides within the same

geographic area. This, along with Section 1090 of the FCC Order and Section 51.711(a)(3) of the FCC rules, supports TCG's symmetrical rate rather than Bell's blended rate.

**B. MEET POINT BILLING ARRANGEMENTS FOR SWITCHED ACCESS INTERCONNECTION - THE RESIDUAL INTERCONNECTION CHARGE**

**1. Tandem-to-Tandem Switching.**

Bell's position is that tandem-to-tandem switching is unusual because it degrades service. For that reason, engineering standards call for little or no tandem-to-tandem switching. Bell notes that the FCC has addressed tandem competition, but not tandem-to-tandem linkups. A third company (an DXC) might have an end office that subtends (is attached to) TCG's tandem switch. Bell asserts that TCG is trying to generate an extra charge where one is not called for and that tandem-to-tandem switching should not occur where there is a feasible network alternative. In Bell's system, an DXC can use any end office or access tandem. Bell wants the same option where an end office and access tandem actually exist. It wants to be able to go to the end office of the DXC if it, Bell, is willing to build the facilities. Bell does not want to be forced to connect to TCG's tandem and pay extra, just as it does not force TCG to connect to its tandem and pay extra. Anything to the contrary allows TCG to set up an artificial toll booth on access to third parties. Tr. 47-49, 52.

TCG contends that the FCC's rulings authorize tandem competition,<sup>6</sup> that it has negotiated arrangements for providing jointly provided switched access services with BellSouth, NYNEX and Pacific Bell, and that Section 251(c)(2) of the Act requires incumbent LEC's to negotiate such arrangements<sup>7</sup>. TCG also contends that the FCC did address tandem-to-tandem switching because it focused on the tandem-to-tandem signaling which would have to be in place to accommodate that kind of traffic exchange. TCG did not indicate where the FCC addressed this issue. Tr. 53. I assume, however, that TCG was referring to the expanded interconnection proceeding referenced in footnote six below. TCG asserts that whether Bell is afforded access to end offices subtending TCG's tandem is a decision of the end office company subtending TCG, not TCG. Tr. 50-51. In response, Bell noted that this issue would be resolved if TCG assured it that it is not entering into, and will not enter into, agreements with third companies to induce them to forbid Bell from connecting in the most direct, technically sensible way. Tr. 51-52. Counsel for TCG stated that it could not reply because Bell raised this issue for the first time during the arbitration conference and because he is not familiar with such agreements TCG might have. Tr. 52.

---

<sup>6</sup> See, Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, CC Docket No. 91-141, 9 FCC Rcd 2718 (1994) ("The steps we now take will enable interconnectors, as well as other parties, to provide tandem switching functions ... these measures will open the door to third parties to provide competitive tandem-switching services.").

<sup>7</sup> TCG Position Statement at 10.

## 2. The Residual Interconnection Charge.

The parties dispute the proper treatment of the Residual Interconnection Charge (RIC), sometimes known as the interconnection charge, and which the FCC refers to as the transport interconnection charge (TIC).<sup>9</sup> The RIC is a per minute charge levied on dedicated and common line users of local transport services.

### a. The Final Offer.

For interstate and intrastate tandem switched access where one carrier operates as a tandem switch and the other carrier operates as an end office switch, TCG wants the tandem company to collect the RIC. For interstate and intrastate tandem switched access where both carriers provide a tandem function, TCG wants each tandem company to collect half of the RIC.<sup>10</sup>

Where one carrier operates as a tandem switch and the other carrier operates as an end office switch, Bell wants the tandem company to collect 25 percent of the RIC and the end office company to collect the remaining 75 percent. Where both carriers provide a tandem function, Bell wants each tandem company to collect 12.5 percent of the RIC, with the end office company collecting the remaining 75 percent.<sup>11</sup>

---

<sup>9</sup> See ECC Order at ¶718. I will use the acronym "RIC" throughout this decision, unless I quote directly from a source which uses the acronym "TIC."

<sup>10</sup> TCG Position Statement at 9-11.

<sup>11</sup> Bell Statement of Best and Final Offer at 5-6; Tr. 44, 46.

**b. The Positions of the Parties.**

TCG's position is that the tandem company is entitled to assess the RIC. Tr.

53. At page 11 of its Position Paper, TCG points out that where it provides all of the tandem and transport services, i.e., where TCG's access tandem switch accepts a call from an IXC and transports it to Bell's end office, it, not Bell should be able to collect the RIC from the IXC because it has provided all of the tandem and transport services. According to TCG, because Bell charges only 20% of the cost of its tandem switch in its tandem switching rates, and because these rates set an effective ceiling on the rates TCG can charge, allowing Bell to charge the RIC would force TCG and its customers to subsidize Bell's tandem and local transport rates, while denying TCG an opportunity to earn a reasonable return on its access tandem product.

TCG relies on the recent decision of the United States Court of Appeals for the District of Columbia Circuit concluding that the FCC has not justified the current RIC because it is not cost-based. Competitive Telecommunications Association et. al v. Federal Communications Commission, slip opinion (No. 95-1168, July 5, 1996) (ComTel v. FCC),<sup>11</sup> a copy of which is attached to TCG's Position Paper. According to TCG, ComTel v. FCC confirms its position that the RIC consists entirely of transport related costs, including 80% of the costs associated with tandem switching, and that this allocation and recovery of costs

---

<sup>11</sup> The Court of Appeals remanded the proceeding to the FCC, instructing it to move expeditiously to a cost-based alternative to the RIC, or to explain why a departure from cost-based ratemaking is necessary and desirable in this context. ComTel v. FCC, slip op. at 23.

has been found to be unlawful. TCG claims that it seeks an equitable and sensible division of revenues for switched access services that does not leave TCG and its customers paying Bell for tandem switching services that TCG provides, while producing a rate ceiling for tandem switching that "discourages competitors with more efficient transport alternatives from entering the market." ComTel v. FCC, slip op. at 17.'

Bell maintains that paragraph 723 of the FCC Order addresses the Court of Appeals remand. Tr. 53. Although 80 percent of tandem costs were moved into the RIC, that is no indication of how much of the RIC consists of tandem costs. The FCC held that 80 percent of tandem costs moved into the RIC made up 25 percent of the RIC, and, therefore, 25 percent of the RIC should be moved back as an appropriate treatment of meet point billing. Tr. 58-59.

### **3. Recommendation.**

#### **a. Tandem-to-Tandem Switching.**

I agree with TCG, for the reasons summarized in Section II. B.1. above, and for the reasons appearing on page 10 of its Statement of Position, that it is permitted to offer a competing access tandem service and can negotiate with Bell to provide jointly provided switched access services. Section 251(c)(2) of the Act requires that incumbent LECs negotiate "for the transmission and routing of telephone exchange service and exchange access...on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." The competitive tandem service TCG will offer requires the incumbent LEC to "transmit and



route exchange access." TCG seeks an agreement with Bell for the rates, terms and conditions of such services, something clearly within the mandate of the Act. If Bell must negotiate for the exchange of jointly provided "telephone exchange service," it must also negotiate for the exchange of jointly provided "exchange access" traffic. The required negotiations and arbitrations under the Act cover the technical and economic aspects of the cooperative provision of these services.

**b. The Residual Interconnection Charge.**

I recommend that TCG be permitted to collect the RIC.

In my opinion, paragraph 723 of the FCC's order does not satisfy the remand order in ComTel v. FCC because it does not move "to a cost-based alternative to the RIC, or ... explain why a departure from cost-based ratemaking is necessary and desirable in this context," as the remand directed.<sup>12</sup>

As I understand paragraph 723, the FCC's interim transport rate structuring set the initial tandem switching rate at 20 percent of the interstate revenue requirement and included the rest of the revenue requirement in the RIC. In paragraph 723, the FCC recognizes that other revenues associated with transport facilities are recovered through the RIC, the magnitude of which are not ascertainable. According to the FCC, these revenues included "certain costs of upgrading incumbent LEC networks to support SS7 signaling."

---

<sup>12</sup> ComTel v. FCC, slip op. at 23.